

# Mortgagee's Certificate

## U.S. Department of Housing and Urban Development Office of Housing

(Execute Originals plus two copies)

OMB Approval No. (Exp. 00/00/00)

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Project Name:

Project Number:

Mortgagee:

Mortgagor:

### To the U. S. Department of Housing and Urban Development (HUD):

#### GENERAL

1. The entity executing this document is the Mortgagee under that certain Security Instrument, \_\_\_\_\_, (the Mortgage) dated \_\_\_\_\_, 20\_\_\_\_, executed by \_\_\_\_\_, the Mortgagor, securing a Note evidencing a loan by the Mortgagee to the Mortgagor in the principal sum of \$\_\_\_\_\_ which the Mortgagee has agreed to make on condition that it be insured by HUD pursuant to the Contract of Insurance comprising of Section \_\_\_\_\_ of the National Housing Act and its implementing regulations. The Mortgagee agrees to be bound by all Directives of HUD.

2. The Mortgagee submits separately a check for \$\_\_\_\_\_ covering the first mortgage insurance premium, together with the other items called for in the HUD commitment dated \_\_\_\_\_, 20\_\_\_\_, and in any extensions or amendments thereof (the Commitment). The Mortgagee certifies that all conditions of the Commitment have been fulfilled to date.

#### CONSTRUCTION LOANS

3. For all cases involving construction advances, the agreement providing for the advancement of said loan is set forth in a Building Loan Agreement dated \_\_\_\_\_, 20\_\_\_\_, of which a duplicate original and two copies are submitted separately.

4. The Mortgagee submits separately a certified survey of the Mortgaged Property and title evidence as specified in the applicable Directives of HUD together with evidence that the Mortgaged Property is not zoned or restricted so as to prevent the construction of the Improvements.

5. Applications for insurance of an advance of Mortgage proceeds will be submitted to HUD as required under the applicable Directives of HUD at least five days prior to the date the Mortgagee desires to disburse such advance. Applications for advances will be accompanied by all documentation required by HUD. The Mortgagee agrees that the amount approved for disbursement by HUD will not be released unless the current extension of the title policy evidences clear and marketable title.

#### FEES AND CHARGES

6. The charges enumerated below have been collected in cash or will be so collected not later than the date of initial endorsement:

(a) FHA application and Commitment fee \$\_\_\_\_\_

(b) Initial service charge, if any \$\_\_\_\_\_  
(not exceeding 2%)

(c) Title and recording expense \$\_\_\_\_\_  
(including cost of surveys, recording fees, mortgage and stamp taxes, etc. associated with initial endorsement)

(d) FHA Inspection Fee \$\_\_\_\_\_

(e) Ground rent during construction \$\_\_\_\_\_  
(may collect only one year's rent at initial endorsements)

(NOTE: Asterisk identifies those items to be paid out of the initial draw.)

#### ESCROWS AND DEPOSITS

7. The Mortgagee has received from the Mortgagor a working capital deposit in the form of (cash or letter of credit) \_\_\_\_\_ in the sum of \$\_\_\_\_\_ which the Mortgagee agrees to maintain and control. Funds in this deposit may be released or allocated for the purposes indicated in the attached Working Capital Escrow Deposit Agreement and for no other purpose unless the Mortgagee obtains the prior written approval of HUD.

8. The Mortgagor has deposited with the Mortgagee or subject to the control and order of the Mortgagee in a depository satisfactory to the Mortgagee, the following sums required by the Commitment: (Check and complete applicable paragraphs.)

☐ Cash required, if any, over the proceeds of the Mortgage, for hard costs to complete the project in the amount of \$\_\_\_\_\_ will be represented by a grant/loan from a nongovernmental source; and \$\_\_\_\_\_ will be represented from a grant/loan from a governmental source. The Mortgagee understands that these funds must be used before any Mortgage proceeds are advanced, except for the grant/loan funds from a governmental source, which, with the prior written approval of HUD, will be disbursed on the following pro-rata basis \_\_\_\_\_. "Over-and-above" amounts have been deposited with the Mortgagee cash in the amount of \$\_\_\_\_\_ and the loan(s) from the governmental source(s) has (have) been deposited in the form of \_\_\_\_\_, or, if not deposited, the obligation(s) is (are) shown in the following contractual document, \_\_\_\_\_, which is attached. In cases where the entire amount of the grant/loan proceeds from a governmental source will not be funded up front at the time of initial closing, an escrow in the amount of \$\_\_\_\_\_, which represents 10 percent of the grant/loan proceeds is being provided from this source. This escrow is in the form of (cash or letter of credit) \_\_\_\_\_. The agreement providing for the advancement of grant/loan proceeds

executed/to be executed among the Mortgagee, HUD, and the governmental agency or instrumentality is attached.

☐ Cash required, if any, over the proceeds of the Mortgage, to complete the project, which will be used before any Mortgage proceeds are advanced, in the amount of \$\_\_\_\_\_.

☐ Escrow deposit guaranteeing payment for off-site utilities and streets in the amount of \$\_\_\_\_\_. This deposit is in the form of (cash or letter of credit) \_\_\_\_\_.

☐ [For Insurance Upon Completion Cases] Escrow or Guaranty Against Latent Defects in the amount of \$\_\_\_\_\_. This deposit is in the form of (cash or letter of credit) \_\_\_\_\_.

☐ [For certain transactions involving a loan for a Health Care Facility insured under Section 232] The Mortgagee shall require that the Mortgagor establish and maintain with the Mortgagee, or in a depository satisfactory to the Mortgagee, a Sinking Fund in accordance with the Regulatory Agreement executed by the Mortgagor (and Lessee, if applicable) and HUD for those Section 232 cases where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass-through of principal and interest on the Mortgage. (Said Sinking Fund will be required in addition to the Reserve for Replacements.) The Mortgagee agrees:

(a) To require the Mortgagor to direct and empower the payor of the capital reimbursement funds to deposit such funds into a trust account designated by the Mortgagee. Also, the trust instrument shall be irrevocable unless approved by the Mortgagee and shall provide that the trustee shall immediately segregate from each provider payment an amount representing the excess depreciation component of the capital reimbursement per a schedule prepared by the Mortgagee and pay it into the Sinking Fund held by the Mortgagee. In jurisdictions which do not allow the Mortgagor to direct and empower the payor of the capital reimbursement fund to deposit funds into a trust account, the Mortgagor and the Mortgagee will enter into a Sinking Fund Agreement in which the parties are obligated to establish, make payments to and maintain the Sinking Fund as required pursuant to the terms of the Regulatory Agreement.

(b) To establish and maintain the Sinking Fund in an interest bearing account in a bank whose capital and surplus are at least \$50,000,000 and which is federally insured.

(c) To furnish HUD quarterly financial reports on the investments, accounting on balances, deposits and withdrawals.

(d) To monitor the Sinking Fund and examine the external auditor's fund balance report and notify HUD whether it complies with the Sinking Fund Agreement between the Mortgagor and the Mortgagee.

(e) To promptly notify Mortgagor and HUD of any irregularities in connection with the Sinking Fund and to take such corrective action as Mortgagee and HUD deem appropriate.

(f) The Sinking Fund constitutes "funds held by Mortgagee for and on behalf of the Mortgagor," and as such, is unrelated to the bond transaction or any other source of funds for the mortgage loan.

(g) In the event of a claim for insurance benefits, the amount of benefits is subject to surcharge if funds have been disbursed from the Sinking Fund in a manner or for purposes not in compliance with the Regulatory Agreement between HUD and the Mortgagor. No such surcharge shall be made on the basis of the Mortgagor's failure to make required deposits into the Sinking Fund.

(h) The Sinking Fund will be used to make principal payments in the later years of the Mortgage. In the event of default, the

Mortgagee shall have the power, only with the prior written approval of HUD or at the express direction of HUD, to apply the Sinking Fund to the payment of amounts due under the Note and related Loan Documents. Withdrawals from the Sinking Fund will be permitted by the Mortgagee to be applied to principal payments due under the Note to the extent allowed by the Regulatory Agreement.

(i) In the event the Mortgagor leases the Health Care Facility to an operator who is responsible for establishing and maintaining the Sinking Fund with the Mortgagee, the aforesaid Sinking Fund provisions shall be fully applicable to the Lessee.

9. The Mortgagee submits separately: (Check applicable paragraphs.)

☐ Off-site bond in the amount of \$\_\_\_\_\_.

☐ Evidence to the effect that required off-site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the project.

10. The Mortgagee submits separately a duplicate copy of the following assurance for the completion of the project: (Check applicable paragraph.)

☐ Performance bond and payment bond of a HUD approved Surety in the penal sum of \$\_\_\_\_\_ for each bond.

☐ Assurance of Completion Agreement reflecting the deposit with \_\_\_\_\_ of a fund in the amount of \$\_\_\_\_\_ in the form of (cash or letter of credit) \_\_\_\_\_ which fund has been deposited and is subject to the Mortgagee's order and will be disbursed with the written approval of HUD in the manner and for the purposes provided for in said agreement.

☐ Personal undertaking in the amount of \$\_\_\_\_\_. It is understood that HUD reserves the right to decide the acceptability of the principals in the personal undertaking.

11. Attached is the Sponsor's guarantee to meet an initial operating deficit as required by the Commitment: (if required, check and complete the applicable paragraph.)

☐ Agreement of Sponsors to Furnish Additional Funds in the amount of \$\_\_\_\_\_, and Bond Guaranteeing Sponsor's Performance.

☐ Escrow Agreement evidencing a (cash or letter of credit) \_\_\_\_\_ deposit in the amount of \$\_\_\_\_\_.

12. Attached is the Sponsor's guarantee to meet the 12-month debt services reserve escrow as required by the Commitment: (Applicable only to Section 232 projects involving independent living units. If required, check and complete the applicable paragraph.)

☐ The Mortgagee has accepted a personal note from the Sponsor for \$\_\_\_\_\_ which the Mortgagee will hold until final completion along with Bond Guaranteeing Sponsor's Performance. Upon final completion, the note will be converted to cash or a letter of credit. The Mortgagee agrees that HUD will treat the Mortgagor's note as a cash item and reduce the insurance benefits by the amount of the Mortgagor's note if there is a Mortgage default and the Mortgagee makes a claim for insurance benefits before the Mortgagor's note is converted to cash.

☐ An escrow deposit in the amount of \$\_\_\_\_\_. This deposit is in the form of (cash or letter of credit) \_\_\_\_\_.

13. If, upon completion of construction, there is any property on the premises which is not, under the laws of the jurisdiction, clearly

subject to the lien of the real estate mortgage, the Mortgagee will require the Mortgagor to execute an appropriate security agreement and the Mortgagee will file appropriate Financing Statements under the Uniform Commercial Code (UCC) or other appropriate security instrument(s) covering such property as required by local law. If the law of the jurisdiction is such that no additional security instrument is necessary to cover such property, the Mortgagee will submit an opinion by counsel to that effect.

14. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by HUD in writing, the Mortgagee shall require a monthly deposit with the Mortgagee or in a depository satisfactory to the Mortgagee of one-twelfth (1/12) of the sum set forth in the Commitment constituting a Reserve Fund for Replacements which fund will be subject to the Mortgagee's order and from which fund withdrawals may be made only upon the receipt of HUD's written permission. The amount of the monthly deposit may be increased or decreased from time to time at the direction of HUD. These funds will be deposited with the Mortgagee by the Mortgagor in cash or in the form of obligations of, or guaranteed as to principal by, the United States of America. The Mortgagee will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to HUD within 60 days of the date such deposits are due.

15. In cases where a Residual Receipts Fund is required under the Regulatory Agreement, the Mortgagee shall require a deposit of Residual Receipts by the Mortgagor within ninety (90) days after the end of the semiannual or annual fiscal period within which such receipts are realized with the Mortgagee or in a depository satisfactory to the Mortgagee. The Residual Receipts Fund will be subject to the control of the Mortgagee and from which fund withdrawals may be made only upon the receipt of HUD's written permission except for permitted distributions pursuant to the terms of the Regulatory Agreement. These funds will be deposited with the Mortgagee by Mortgagor in cash or in the form of obligations of or guaranteed as to principal by the United States of America. The Mortgagee will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. The Mortgagee agrees to notify HUD in writing of any irregularity with respect to such Residual Receipts Fund immediately upon such irregularity coming to the attention of the Mortgagee.

16. The Mortgagee understands that nothing herein contained or contained in the Note or Mortgage securing the same, or in the other Loan Documents, is to be deemed a waiver of any of the provisions of the aforesaid HUD regulations, but all of said instruments are intended to be subject thereto. The Mortgagee hereby agrees to conform with and abide by such HUD regulations in all matters with respect to the aforesaid loan and the project in so far as they are applicable to the Mortgagee. The Mortgagee agrees to furnish HUD with a complete report of the results of any inspection of the Mortgaged Property which the Mortgagee is required to perform under applicable Directives of HUD.

17. The Mortgagee certifies that, if the Mortgagor defaults in its obligation to complete the construction of the Improvements on the Mortgaged Property, the Mortgagee has the right to complete the project, which right is transferable to HUD, and for that purpose the undisbursed balance of the Mortgage will be available in the event the completion of the project is undertaken by either the Mortgagee or HUD. Such undisbursed balance may be used to discharge any and all valid liens or claims against the project and all such advances will be considered as made for the account of the Mortgagor and will be covered by the terms of the Mortgage. It is understood that all Mortgage proceeds funds so advanced for the completion and

preservation of the property will be covered by the Contract of Mortgage Insurance.

18. So long as the Contractor, and/or Mortgagor, or upon default, the surety or any other person acting on behalf of, or in substitution for them, shall be ready, able and willing to complete the contract for the construction of the project, the Mortgagee will, upon notice from HUD, advance the undisbursed balance of the Mortgage and authorize release of the grant loan proceeds, if any, for that purpose. The term "Contractor" shall mean all persons, firms or corporations contracting directly with the Mortgagor for the construction of all or any portion of the project.

19. The Mortgagee certifies that all insurance policies on the project required by the terms of the insured Mortgage will have attached thereto a standard Mortgagee clause making the loss payable to the Mortgagee and the Secretary, Department of Housing and Urban Development, as their interests may appear.

20. The Mortgagee certifies and agrees that: (Check and complete the following applicable subparagraphs (a), (b), (c), (d), (e) or (f).)

☐ (a) The Mortgagee has not imposed and will not impose a financing charge of any kind directly or indirectly, other than the initial service charge in the amount of \$\_\_\_\_\_ which is included in the Mortgage proceeds.

☐ (b) In addition to the initial service charge, the Mortgagee has collected in the form of (cash or letter of credit) \_\_\_\_\_ for the amount of \$\_\_\_\_\_ as a discount or financing charge for the construction loan. Also, an amount of \$\_\_\_\_\_ has been collected in the form of (cash or letter of credit) \_\_\_\_\_ to cover construction loan extension fees. Attached, the Mortgagee has identified the time frames in which the extension fees must be paid.

☐ (c) The Mortgagee intends to retain the permanent loan and has collected a permanent placement fee of \$\_\_\_\_\_. In addition to the initial service charge and permanent placement fee, the Mortgagee has collected in the form of (cash or letter of credit) \_\_\_\_\_ the amount of \$\_\_\_\_\_ as a discount or financing charge for the permanent loan. The Mortgagee also intends to collect in the form of (cash or letter of credit) \_\_\_\_\_ an amount of \$\_\_\_\_\_ to cover permanent loan extension fees. Attached, the Mortgagee has identified the time frames in which the extension fees must be paid.

☐ (d) The Mortgagee has a firm commitment from \_\_\_\_\_ to purchase the loan when fully disbursed and fully insured at a financing charge or discount of \_\_\_\_\_ and the Mortgagee has collected in the form of (cash or letter of credit) \_\_\_\_\_ the sum of \$\_\_\_\_\_ to cover said charge or discount. The commitment also requires the collection of permanent loan extension fees in the amount of \$\_\_\_\_\_, which will be collected in the form of (cash or letter of credit) \_\_\_\_\_. Attached, the Mortgagee has identified the time frames in which the extension fees must be paid.

☐ (e)(1) This project will be financed with (tax-exempt or taxable) \_\_\_\_\_ bonds. Therefore, the Mortgagee has collected in the form of (cash or letter of credit) \_\_\_\_\_ the amount of \$\_\_\_\_\_ to cover costs if issuance. A statement is attached itemizing these costs with an explanation of the necessity of each cost. The Mortgagee also intends to collect in the form of (cash or letter of credit) \_\_\_\_\_ the amount of \$\_\_\_\_\_ to cover permanent loan extension fees. Attached, the Mortgagee has identified the time frames in which the extension fees must be paid.

☐ (e)(2) GNMA Mortgage Backed Securities will be issued for the construction and/or permanent loan(s). The Mortgagee has collected a GNMA Indemnification Escrow in the form of (cash or letter of credit) \_\_\_\_\_ in the amount of \$ \_\_\_\_\_. This escrow will be maintained for 36 months after the issuance of the result from a Mortgage default. The Mortgagee understands that this fee is not cost certifiable by the Mortgagor inasmuch as it will potentially be returned to the Mortgagor at the end of the escrow period if the project is not in default.

☐ (f) Additional financing charges or discount of \$ \_\_\_\_\_ are to be collected under the attachment hereto for the purpose shown in (b), (c), (d), (e). (Strike inapplicable letters.) The arrangement for the collection of additional financing charges or discount must follow forms and procedures prescribed by HUD.

No financing charges other than charges disclosed herein have been or will be made. Until final endorsement for insurance by HUD, all funds collected pursuant to items (c),(d), or (e) above and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of the Mortgagor and shall be subject to HUD's control and direction in the event of a claim under the Contract of Mortgage Insurance.

21. Except for Mortgage advances approved by HUD or notes executed pursuant to section (20)(f) above, Mortgagee does not have outstanding and will not make loans or advances to the Mortgagor, any of the Sponsors, the general contractor, or the architect for any purpose connected directly or indirectly with this project without prior written approval of HUD. The Mortgagee has not made or offered, and will not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person to make loans or advances which the Mortgagee would be prohibited from making under the terms of this paragraph.

22. The Mortgagee certifies that the Mortgagee has not made and will not make payment of any kickback or fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this Mortgage transaction, including the purchase or sale of the Mortgaged Property, except for compensation paid or to be paid, if any, for the actual performance of services and approved by HUD.

23. The Mortgagee certifies that in any case where a letter of credit has been accepted instead of cash, (a) such, unconditional and irrevocable letter of credit has been issued by (1) another banking institution; (2) the Mortgagee, subject to receiving HUD's written permission prior to initial endorsement; (b) if demand under the letter of credit is not immediately met, the Mortgagee will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the Mortgagor, any Sponsor, the general contractor or the architect; (c) the Mortgagee has not made and will not make any inducements as described in Section 21 above to procure issuance of letters of credit; and (d) the Mortgagee has made every reasonable effort to satisfy itself that both the Mortgagor and the institution which issued the letter of credit are aware that demands may be made for cash under the terms of the letter of credit and that no possibility exists that Mortgage proceeds will be available to reimburse the issuing bank for such cash pay-outs.

24. For mortgages funded with the proceeds of State or local bonds, GNMA mortgage-backed securities, other bond obligations as defined by HUD, any of which contain a lock-out and/or penalty provision, the Mortgagee agrees, in the event of a default during the term of the prepayment lock-out and/or penalty (i.e., prior to the date on which prepayments may be made with a penalty of one percent or less), to:

(a) request a three-month extension of the deadline prescribed by 24 C.F.R. Section 207.258 for filing a notice of the Mortgagee's intention to file an insurance claim and the Mortgagee's election to assign the Mortgage;

(b) assist the Mortgagor in arranging a refinancing to cure the default and avert an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;

(c) report to HUD at least monthly on any progress in arranging a refinancing;

(d) otherwise cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(e) require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out and/or penalty;

(f) notify HUD of the delinquency when a payment is not received by the 16<sup>th</sup> day of the month in which it is due.

25. The Mortgagee certifies to HUD that the Mortgagee has no interest in or identity whatsoever with the Mortgagor or in any persons or entities involved in the Mortgagor entity.

26. The Mortgagee certifies to HUD that the Mortgagee has no interest in and has no identity whatsoever with counsel to the Mortgagor.

27. The Mortgagee certifies to HUD that all funds, escrows and deposits specified in this Certificate and any and all other funds held in connection with the Mortgage transaction covered by this Certificate shall be funds held for or on behalf of the Mortgagor pursuant to the Contract of Mortgage Insurance.

28. For any case involving components stored off-site, the Mortgagee agrees to:

(a) File Financing Statements (UCC-1), in the proper jurisdiction with the proper office;

(b) Make whatever additional filings are necessary to maintain a first lien of the components until they are incorporated into the building(s);

(c) Release the Financing Statement filings as appropriate;

(d) Unconditionally certify by letter to HUD with each disbursement request that the Security Instrument(s) is (are) a "first lien" on the building components covered by the Instrument(s). This certification will be supported by an opinion from the Mortgagee's legal counsel;

(e) In the event of default under the Mortgage, either assign the Mortgagee's security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD;

(f) Require a performance bond and payment bond each in an amount equal to 100 percent of the construction contract be used to satisfy the assurance of completion requirements.

29. The Mortgagee certifies that all HUD form closing documents submitted to HUD in connection with this transaction (with the exception of the Opinion by Counsel to the Mortgagor and the accompanying Certification by the Mortgagor) conform to those documents the Mortgagee obtained from HUD on CD-ROM # \_\_\_\_\_ (dated \_\_\_\_\_) and such documents have not been

changed or modified in any manner except as indicated to HUD field counsel in a redlined version and except as such changes have been specifically approved by HUD field counsel in the attached memorandum. The Mortgagee further certifies that any additional documents submitted to HUD that are not on such CD-ROM have been reviewed and approved in writing by HUD field counsel and are identified as:

30. The Mortgagee agrees to notify HUD in writing immediately upon learning of any violation of the Regulatory Agreement by the Mortgagor.

31. Whenever the terms "Mortgage," "Mortgagor," or "Mortgagee" are used herein, the same shall be deemed to include respectively; the security instrument whether the same be a Mortgage or a Deed of Trust; the Obligor of the debt secured thereby; the Obligee, or the Trustee(s) and the Beneficiary of said credit instrument. The definition of any capitalized term or word used herein can be found in the Regulatory Agreement between Mortgagor and HUD and/or the Mortgage. The term "financing charge(s)," as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Date	Mortgagee
Attest	By

**Warning: Mortgagee acknowledges and takes note of the following criminal and civil statutes that may be applicable:**

**Title 18 of the U.S. Code, Section 1001** makes a criminal offense to make a willfully false statement or misrepresentation to any Department or Agency of the United States as to any matter within its jurisdiction.

**Title 18 of the U.S. Code, Section 1735f-14** provides in part that HUD may impose civil money penalties against the mortgagee or principal, officer, or employee of such mortgagee for any knowing and material violation of any action listed in 12 U.S.C. § 1735f-14(b).